

AMENDED IN ASSEMBLY MAY 14, 2009

AMENDED IN ASSEMBLY MAY 4, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1318

Introduced by Assembly Member V. Manuel Perez
(Principal coauthors: Senators Ducheny and Benoit)
(Coauthor: Assembly Member Nestande)

February 27, 2009

An act to add and repeal Section 40453 of the Health and Safety Code, relating to air pollution, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1318, as amended, V. Manuel Perez. South Coast Air Quality Management District: emission reduction credits for electrical generating facilities.

(1) Under existing law, every air pollution control district or air quality management district governing board, except as specified, is required to establish by regulation a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants are required to be banked prior to use to offset future increases in emissions, as provided.

This bill would require the executive officer of the South Coast Air Quality Management District, upon making a specified finding, to transfer a specified quantity of emission reduction credits for certain pollutants from the south coast district's internal emission credit accounts to eligible electrical generating facilities, as described, thereby imposing a state-mandated local program. ~~The bill would grant the State~~

~~Energy Resources Conservation and Development Commission the exclusive authority to review the environmental impact of the executive officer's actions. These provisions would be repealed on January 1, 2013.~~

The bill would state the findings and declarations of the Legislature concerning the need for special legislation.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(3) The bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Sufficient rotating electrical generation capacity is required
- 4 within the Los Angeles Basin Local Reliability Area to ensure
- 5 stable operation of the power grid. ~~Future load growth and the~~
- 6 ~~anticipated retirement of aging, inefficient gas-fired capacity will~~
- 7 ~~cause the power grid to be unacceptably below minimum safety~~
- 8 ~~levels, absent the passage of this measure.~~
- 9 (b) Energy efficiency and renewable resources, which are
- 10 primarily located outside of the Los Angeles Basin Local
- 11 Reliability Area, ~~are unable~~ *may not be sufficient* to satisfy the
- 12 in-basin rotating electrical generation capacity need.
- 13 (c) In October 2005, the Public Utilities Commission and the
- 14 State Energy Resources Conservation and Development
- 15 Commission (commission) adopted the Energy Action Plan II,
- 16 which establishes a policy that the state will rely on clean and
- 17 efficient fossil fuel-fired generation to the extent energy efficiency
- 18 and renewable resources are unsuitable.
- 19 (d) The Energy Action Plan II establishes a policy that the state
- 20 will encourage the development of cost-effective, highly efficient,

1 and environmentally sound supply resources to provide reliability
2 and consistency with the state's energy priorities.

3 (e) Executive Order S-14-08, signed by the Governor on
4 November 17, 2008, calls for a new, more aggressive renewable
5 energy target, increasing the current goal of obtaining 20 percent
6 of the energy used by electrical corporations from clean, renewable
7 sources by the year 2010 to 33 percent by the year 2020. ~~Expanding~~
8 ~~the use of renewable electricity must be accompanied by additional~~
9 ~~quick-start, high ramp rate, nonrenewable electrical generating~~
10 ~~units to meet peak demand and respond to production variations~~
11 ~~inherent in intermittent renewable electricity supplies.~~

12 (f) New electrical generating capacity in the Los Angeles Basin
13 Local Reliability Area is required to meet best available control
14 technology (BACT) standards and is required to fully offset any
15 remaining emissions of nonattainment pollutants, including sulfur
16 oxides and particulate matter with emission credits.

17 (g) Emission credits available in the air basins regulated by the
18 South Coast Air Quality Management District ~~are~~ *may be*
19 insufficient to allow new electrical generating capacity to be
20 constructed, ~~and new emission credits cannot be created quickly~~
21 ~~enough, and in sufficient quantity, to facilitate timely construction~~
22 ~~of needed new generation capacity.~~

23 (h) The South Coast Air Quality Management District maintains
24 internal emission credit accounts that it uses to permit, among
25 other things, small and essential public services.

26 (i) ~~Requiring the South Coast Air Quality Management District~~
27 ~~to provide emission reduction credits from the district's internal~~
28 ~~accounts, or "Priority Reserve," for projects for new electrical~~
29 ~~generating capacity located outside of the South Coast Air Basin,~~
30 ~~and that have entered into agreements with an electrical corporation~~
31 ~~to provide electricity in the Los Angeles Basin Local Reliability~~
32 ~~Area, is the only way to ensure the timely construction of needed~~
33 ~~capacity while mitigating impacts on air quality.~~

34 (j) ~~Such a transfer of emission credits would not conflict with~~
35 ~~the provisions of the Protect California Air Act of 2003 (Chapter~~
36 ~~4.5 (commencing with Section 42500) of Part 4 of Division 26 of~~
37 ~~the Health and Safety Code) because the new electrical generating~~
38 ~~capacity will be subject to review that is equivalent to the~~
39 ~~California Environmental Quality Act (Division 13 (commencing~~
40 ~~with Section 21000) of the Public Resources Code) by the State~~

1 Energy Resources Conservation and Development Commission,
2 and to the requirements to meet BACT standards and fully offset
3 any remaining emissions.

4 (k) ~~Transferring authority to review the environmental impacts~~
5 ~~of crediting and transferring emission credits to the State Energy~~
6 ~~Resources Conservation and Development Commission will ensure~~
7 ~~that there will be environmental review of the potential impacts~~
8 ~~while ensuring timely construction of the needed capacity.~~

9 (l) ~~This act is necessary to ensure timely construction of needed~~
10 ~~new electrical generating capacity.~~

11 SEC. 2. Section 40453 is added to the Health and Safety Code,
12 to read:

13 40453. (a) ~~The executive officer, in cooperation with the State~~
14 ~~Energy Resources Conservation and Development Commission~~
15 ~~and upon finding that the eligible electrical generating facility~~
16 ~~proposed for certification by the State Energy Resources~~
17 ~~Conservation and Development Commission meets the~~
18 ~~requirements of the applicable new source review rule and all other~~
19 ~~applicable district regulations that must be met under Section~~
20 ~~1744.5 of Title 20 of the California Code of Regulations, shall~~
21 ~~credit to its~~ *the south coast district's* internal emission credit
22 accounts and transfer from ~~its~~ *the south coast district's* internal
23 emission credit accounts to eligible electrical generating facilities
24 emission credits up to the following aggregate amounts:

25 (1) Sulfur oxides (SO_x) in the amount of 0.1 tons per day.

26 (2) Fine particulate matter (PM10) in the amount of 0.6 tons
27 per day.

28 (b) The south coast district may rely on the south coast district's
29 Rule 1315, as adopted on August 3, 2007, to credit emission credits
30 to its internal emission credit accounts to carry out the obligations
31 of subdivision (a).

32 (c) The emission reduction credits in subdivision (a) shall satisfy
33 all state and south coast district requirements related to the
34 provision of credits or offsets for new electrical generating
35 facilities.

36 (d) In order to be eligible for emission reduction credits pursuant
37 to this section, an electrical generating facility shall meet all of the
38 following requirements:

39 (1) Be subject to the permitting jurisdiction of the State Energy
40 Resources Conservation and Development Commission.

1 ~~(2) Be subject to environmental analysis pursuant to the State~~
2 ~~Energy Resources Conservation and Development Commission's~~
3 ~~power facility and site certification authority (Chapter 6~~
4 ~~(commencing with Section 25500) of Division 15 of the Public~~
5 ~~Resources Code).~~

6 ~~(3)~~

7 (2) Have a purchase agreement, executed on or before December
8 31, 2008, to provide electricity to a public utility, as defined in
9 Section 216 of the Public Utilities Code, subject to regulation by
10 the Public Utilities Commission, for use within the Los Angeles
11 Basin Local Reliability Area.

12 ~~(4)~~

13 (3) Be under the jurisdiction of the south coast district, but not
14 within the South Coast Air Basin.

15 (e) The executive officer shall not transfer emission reduction
16 credits pursuant to this section until the receipt of payment of the
17 mitigation fees set forth in the south coast district's Rule 1309.1,
18 as adopted on August 3, 2007. The mitigation fees shall only be
19 used for emission reduction purposes. The south coast district shall
20 ensure that at least 30 percent of the fees are used for emission
21 reductions in areas within close proximity to the electrical
22 generating facility and at least 30 percent are used for emission
23 reductions in areas designated as "Environmental Justice Areas"
24 in Rule 1309.1.

25 (f) The executive officer's authority to transfer emission
26 reduction credits pursuant to this section shall terminate when the
27 executive officer has transferred emission reduction credits in
28 amounts that are equal to the aggregate amounts set forth in
29 subdivision (a).

30 ~~(g) (1) Notwithstanding any other provision of law, the State~~
31 ~~Energy Resources Conservation and Development Commission~~
32 ~~shall have exclusive authority to review the environmental impact,~~
33 ~~if any, of the executive officer's acts in identifying, crediting, and~~
34 ~~placing the emission credits to be transferred under this section~~
35 ~~into the new source review tracking system that the south coast~~
36 ~~district maintains and in transferring these credits to eligible~~
37 ~~electrical generating facilities for use in offsetting emissions of~~
38 ~~eligible facilities. The commission shall complete this review~~
39 ~~within 60 days of the effective date of this section. The commission~~
40 ~~shall exercise this authority in a manner that is consistent with its~~

1 regulatory responsibilities under Chapter 6 (commencing with
2 Section 25500) of Division 15 of the Public Resources Code,
3 including its responsibilities as an agency that maintains a certified
4 regulatory program under the California Environmental Quality
5 Act (Division 13 (commencing with Section 21000) of the Public
6 Resources Code) as specified in Section 15251 of Title 14 of the
7 California Code of Regulations. If the commission determines that
8 the executive officer's actions in identifying, crediting, and
9 transferring emission credits will have a significant environmental
10 impact, the commission shall have exclusive authority to impose
11 conditions to mitigate environmental impacts as a condition of
12 certification of a project that receives credits pursuant to this
13 section. The actions of the commission pursuant to this section
14 shall be subject to judicial review only in accordance with the
15 provisions for powerplant facility and site certification as set forth
16 in Section 25531 of the Public Resources Code.

17 (2) The State Energy Resources Conservation and Development
18 Commission may find that the transferred emission credits conform
19 with the requirements of paragraph (1) of subdivision (d) of Section
20 25523 notwithstanding the requirement in paragraph (2) of
21 subdivision (d) of Section 25523 of the Public Resources Code.

22 (h)

23 (g) This section shall be implemented in a manner consistent
24 with federal law, including the Clean Air Act (42 U.S.C. Sec. 7401
25 et seq.).

26 (i)

27 (h) This section shall remain in effect only until January 1, 2013,
28 and as of that date is repealed, unless a later enacted statute, that
29 is enacted before January 1, 2013, deletes or extends that date.

30 SEC. 3. Due to unique circumstances concerning the South
31 Coast Air Quality Management District, the Legislature finds and
32 declares that a general statute cannot be made applicable within
33 the meaning of Section 16 of Article IV of the California
34 Constitution.

35 SEC. 4. If the Commission on State Mandates determines that
36 this act contains costs mandated by the state, reimbursement to
37 local agencies and school districts for those costs shall be made
38 pursuant to Part 7 (commencing with Section 17500) of Division
39 4 of Title 2 of the Government Code.

1 SEC. 5. This act is an urgency statute necessary for the
2 immediate preservation of the public peace, health, or safety within
3 the meaning of Article IV of the Constitution and shall go into
4 immediate effect. The facts constituting the necessity are:

5 In order to help create sufficient electrical generating capacity
6 in southern California to meet the current and future needs of the
7 region and to prevent rolling blackouts during peak demand
8 periods, thereby preserving the public peace, health, and safety,
9 and to provide the necessary infrastructure to support increased
10 reliance on renewable sources of energy, it is necessary that this
11 statute take effect immediately.

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